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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/121,300	07/23/98	KANIA	3295-0024-00

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QM31/0423

EXAMINER

WILLSE, D

ART UNIT

PAPER NUMBER

3738

DATE MAILED: 04/23/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

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# Office Action Summary

Application No.  
09/121,300

Applicant(s)  
KANIA

Examiner  
Dave Willse

Group Art Unit  
3738



☒ Responsive to communication(s) filed on Feb 9, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 21-68 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 21-68 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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The Information Disclosure Statement filed February 9, 1999, fails to comply with the provisions of 37 CFR 1.97(c). Although the paper contains a general statement regarding the charging of fees, there is no indication as to whether the Applicant can make a certification under 37 CFR 1.97(e) or whether the Applicant instead wishes to submit the fee set forth in 37 CFR 1.17(p). It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e) (MPEP § 609 ¶ C(1)).

The substitute abstract alleged to have been submitted cannot be found among the papers received on February 9, 1999. Therefore, the following sentence is repeated from the Office action of November 9, 1998. The abstract of the disclosure is objected to because it should be more descriptive of the subject matter covered by the technical disclosure (MPEP § 608.01(b)).

Claims 65-68 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 65-68, any claim which depends from a claim which "consists of" the recited elements or steps cannot add an element or step (M.P.E.P. 2111.03).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21, 25, 29, 37, 41, 45, and 61 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Norman, GB 2 213 380 A.

Claims 33, 49, 53, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norman, GB 2 213 380 A. Regarding claims 33, 53, and 57, the particular types of fabrics are well known to the ordinary practitioner and would have been obvious material choices for the sock 13 or the lamination (page 4, lines 12-18). The recessed area of instant claim 49 would have been obvious from the procedure outlined on page 2, lines 14-19, and page 3, line 10, et seq. and from the anatomy pertaining to Figure 3.

Claims 21-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caspers, US 5,571,208. In regard to claim 21, to combine the sheath 200 with the liner 90 would have been obvious from column 10, line 50, and Figure 26 in order to simplify the donning procedure described in column 10, line 59 et seq. Regarding claim 33 and others, a blend of nylon and spandex would have been obvious from column 10, lines 53 and 64-65; column 11, line 63; etc.

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Regarding claim 49 and others, a recessed area towards the open end of the covering would have been obvious from the discussions in column 6, lines 33-39 and lines 56-67, and column 7, lines 1-2. Regarding claim 65 and others: column 9, lines 24-27; column 3, lines 25-28; etc.

The Declaration under 37 CFR 1.132 by Raymond Francis and the Applicant's remarks have been reviewed. It is noted that the term "coat" is defined as "[a] layer of covering material: COATING" and also means "[t]o provide or cover with a coat" (*Webster's II New Riverside University Dictionary*: 1984); thus the donned configuration described in column 10, lines 59-62, of Caspers even appears to anticipate the present invention as set forth in claim 21. Moreover, *binding* stump liner elements in some way is common in the art and would have been obvious in order to simplify the method of use by reducing the number of items involved.

The new grounds of rejection were necessitated by the revisions to claim 21, notably the language "consisting of" on line 3. Therefore:

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is (703) 308-2903. The supervisory patent examiner is Mickey Yu, whose telephone number is (703) 308-2672. The receptionist's phone number is (703) 308-0858, and the main FAX numbers are (703) 305-3591, 3590.

dhw: D. Willse  
April 16, 1999

  
**DAVE WILLSE**  
**PRIMARY EXAMINER**  
**ART UNIT 3738**